

EXHIBIT 36

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**** CONFIDENTIAL ****

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Adv.Pro.No.
08-01789 (BRL)

Debtor.

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

VIDEOTAPED DEPOSITION of JOEL
EHRENKRANZ, as taken by and before Monique Vouthouris,
Certified Court Reporter, RPR, CRR and Notary Public
of the States of New York and New Jersey, at the
offices of BAKER HOSTETLER, 45 Rockefeller Plaza, New
York, New York, on Thursday, March 20, 2014,
commencing at 10:07 a.m.

1 hour. This is a decent break point, if you would
2 like, or I'm happy to continue.

3 THE WITNESS: We can go on, if it's
4 okay with everyone.

5 BY MR. KITCHEN:

6 Q. Mr. Ehrenkranz, do you know Bernard
7 Madoff?

8 A. Please tell me the word "know."
9 Explain the word.

10 Q. Sure. Have you ever met him?

11 A. Yes, sir.

12 Q. When did you meet him? When did you
13 first meet him?

14 A. I met him for the only time probably
15 about 1991, '2.

16 Q. And why did you meet him at that time?

17 A. I met him at Ezra's suggestion to
18 consider investing with him.

19 Q. Were you considering investing with
20 Mr. Madoff at that time?

21 A. That is why I considered meeting him.

22 Q. Do you recall anything said by
23 Mr. Merkin at that time regarding Madoff?

24 A. Other than the fact that he suggested
25 that we meet with him because he considered Mr. Madoff

1 to be a good investor.

2 Q. Did you have any understanding at that
3 time of any relationship between Mr. Merkin and
4 Mr. Madoff?

5 A. I think Mr. Merkin referred to how he
6 would speak with Mr. Madoff about where the markets
7 were.

8 Q. Did you have an understanding of
9 whether Merkin and his funds were invested with
10 Mr. Madoff at that time?

11 A. No.

12 Q. At the time of that meeting, did you
13 have an understanding of BLMIS' investment strategy,
14 or at least, looking back, its purported investment
15 strategy?

16 A. Yes, it was explained to me and I
17 understood the idea of the strategy.

18 Q. How was it explained to you?

19 A. It was explained to me as a strategy I
20 think which is currently called a covered call
21 strategy, where Mr. Madoff would buy a stock, sell it,
22 call against it and take those proceeds, buy a put,
23 thereby protecting the downside.

24 Q. And who explained that to you?

25 A. Mr. Madoff.

1 calls, puts and other transactions, ending balance,
2 and I thought it was a -- a wonderfully transparent
3 report.

4 Q. Did anything that you discussed at that
5 meeting raise concerns with you?

6 A. Yes. The slips which he sent out, he
7 described that he would send slips were from Madoff
8 and company, and the statement, the monthly statement
9 was from Madoff and company.

10 Q. And why was that a concern?

11 A. Because I said where is the independent
12 verification? And I said to him that this is -- his
13 strategy was a very interesting strategy for us, and
14 that we could be an investor with him if he cleared
15 his trades through some entity like a Merrill Lynch or
16 a Morgan Stanley or Goldman Sachs or one of the major
17 clearing firms.

18 Q. Was it typical of you to inquire into
19 potential investors -- I'm sorry, investment managers
20 as to whether or not there was independent
21 verification of trades?

22 A. Absolutely.

23 Q. Why?

24 A. Because that's the only way you can
25 assure yourself that, in fact, what is occurring, what

1 you believe is occurring, is, in fact, occurring.

2 Q. So even though you believed that he
3 gave his clients significant amount of transparency,
4 that's what you testified to before, you still had a
5 concern because that transparency was not
6 independently verified. Is that accurate?

7 A. Yes.

8 Q. Did you discuss any other concerns with
9 Mr. Madoff?

10 A. No, other than probably how big he
11 could be in the -- in the -- in what he was doing, and
12 there was some recollection, which I'm not as clear
13 about, about the auditing firm that audited the
14 statements. I was not as clear about it because I
15 cared about the independent verification.

16 Q. What do you recall about -- I assume
17 you're talking about Mr. Madoff's auditor?

18 A. Yes. I don't really recall much of
19 that conversation other than asking -- or having seen
20 the auditor and having it not be a name of any
21 recognition and having that as what I'm going to call
22 a minor concern.

23 My big issue was if it was done through
24 a Merrill Lynch or Morgan Stanley, I would have had a
25 somewhat different point of view. I might have

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1 A. My brother reporting to me --

2 MR. STEINER: Objection to form.

3 A. -- that Mr. Madoff said he wasn't going
4 to do it for the very reason I reported.

5 Q. Did you ultimately decide not to invest
6 with Mr. Madoff then?

7 A. Correct.

8 Q. Following that meeting and phone call,
9 do you recall having discussions with anyone at
10 Ehrenkranz regarding your discussions with Madoff?

11 A. Other than we probably reported to
12 Larry Cohen our meeting.

13 Q. Did you express to him the concerns
14 that you had had --

15 A. Of course.

16 Q. Do you recall after that having any
17 discussions with Ezra Merkin regarding --

18 A. Definitely telling him we weren't doing
19 it for those reasons.

20 Q. And specifically the reasons as to
21 clearing?

22 A. Yes.

23 Q. And the auditor?

24 A. Yes. Not the auditor, but the reasons
25 of the independent clearing.

1 Q. Do you remember what Mr. Merkin's
2 response was, if anything?

3 A. No.

4 Q. Did you express to Mr. Merkin the
5 possibility of using an independent clearing fund as
6 you had --

7 A. Would you repeat that question?

8 Q. Sure. Your proposal to Mr. Madoff that
9 he independently clear through Goldman or Merrill
10 Lynch --

11 A. Yes.

12 Q. -- did you discuss that possibility
13 with Ezra Merkin as well?

14 MR. STEINER: Objection to form.

15 A. I'm going to answer it by saying we
16 probably said that to Ezra Merkin in reporting on what
17 the meeting was.

18 Q. Do you remember if Mr. Merkin ever
19 expressed whether your concerns were valid or
20 reasonable?

21 MR. STEINER: Objection to form.

22 A. No, no.

23 Q. Did he ever express whether he,
24 himself, had discussed those issues with Mr. Madoff?

25 A. No.

1 Q. Did he ever suggest that you invest
2 with Mr. Madoff indirectly through Ascot?

3 A. Yes.

4 Q. When did he make that recommendation?

5 A. I'm going to guess that was the year --
6 I'm going to put it in '94.

7 Q. And what did he say?

8 A. He said that he was creating a fund to
9 invest with Mr. Madoff and that he encouraged us to
10 invest in that fund and that he would provide the
11 independent verification that we found lacking in a
12 satisfactory mode.

13 Q. Did he explain how that independent
14 verification would be done?

15 A. He said he was going to have someone in
16 his office go ahead and monitor the trades that were
17 made by Mr. Madoff at the time he made them and have
18 an accounting firm go ahead and monitor it also, give
19 independent verification of it, a recognized
20 accounting firm.

21 Q. Do you recall who that firm was?

22 A. I don't.

23 Q. Do you recall if they had a
24 relationship with Mr. Madoff, I'm sorry, with
25 Mr. Merkin or his --

1 Q. Sure. You said you recalled paying a
2 management fee but not an incentive fee.

3 A. To Ascot?

4 Q. To Ascot, correct.

5 A. But your question related to something
6 else.

7 Q. I appreciate that. Let me rephrase.
8 Why did you pay that fee? What was its
9 purpose?

10 A. Well, we paid a fee to Mr. Merkin,
11 Ascot Fund to him to do the due diligence, arrange the
12 auditing and do all the things that had to be done
13 with governance of any pool of assets.

14 Q. Was it your understanding that
15 Mr. Merkin kept that fee himself or at least his
16 management company kept that fee?

17 MR. STEINER: Objection to form.

18 A. I assume that, sure.

19 Q. Did he ever express that that fee was
20 being passed along to Mr. Madoff?

21 A. No.

22 Q. You previously testified that DIS fully
23 redeemed from Ascot Partners towards the end of 1995.
24 Is that correct? Why did you redeem then?

25 A. I don't remember the markets as well in

1 that period of time. But the stability of the returns
2 began to belie any understanding of how it was
3 possible to achieve, and we just became sufficiently
4 uncomfortable with the whole idea of his ability to do
5 this. And notwithstanding Merkin's feeling that it
6 was okay, we just were sufficiently uncomfortable. We
7 just didn't want to be there.

8 Q. Okay. Can you explain further what you
9 mean by stability of the return?

10 A. It's hard, it's almost unimaginable in
11 the financial markets to go ahead and get the kind of
12 positive returns on a monthly basis that Mr. Madoff
13 seemed to be able to get, and at some point in time it
14 just belied logic and it had belied logic, and I
15 really couldn't care less, if we weren't invested,
16 hearing about it. But once we were invested, it
17 really was -- it made us very, very uncomfortable, and
18 there is no reason to be uncomfortable.

19 Q. Did you have any discussions with
20 Mr. Merkin regarding that?

21 A. Oh, yes, many.

22 Q. What did you say to him?

23 A. I said what I just said, that it was
24 very hard to achieve these kinds of returns and just
25 almost impossible. And Mr. Merkin thought Mr. Madoff

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1 had a wonderful touch, I guess, and had indicated all
2 that he was doing this our great concern about the
3 independent verification. But, nevertheless, was very
4 cordial and gentlemanly when we said we really would
5 like to be out.

6 Q. Did he ever provide an explanation for
7 the reason for Mr. Madoff's consistency?

8 A. No.

9 Q. Did he ever provide an explanation for
10 how BLMIS could generate positive returns even in a
11 down market?

12 A. No.

13 Q. During the time of that investment, did
14 you maintain your -- the concerns we previously
15 discussed about the clearing firm and the auditor?

16 MR. STEINER: Objection to form.

17 A. No. It was -- during the term that we
18 were invested?

19 Q. Yes.

20 A. No, no. We relied upon Mr. Merkin.

21 Q. Did you continue to discuss those
22 issues with Mr. Merkin at all?

23 A. If I can take your question to be, you
24 used the word "continue," did we ever once again
25 during that period of time discuss that, I don't

1 Gabriel had been invested with BLMIS during that time?

2 A. One minute ago as you just described
3 it.

4 Q. When was the first time that you
5 learned that Ariel and Gabriel had ever had exposure
6 to BLMIS?

7 A. At today's meeting.

8 Q. Okay. Did Mr. Merkin inform you of
9 that following Mr. Madoff's arrest?

10 A. No.

11 Q. Okay. So you didn't know until you
12 came in today that Gabriel and Ariel were invested
13 with BLMIS?

14 A. Correct.

15 Q. Prior to today, do you remember having
16 any discussions with anyone at Ehrenkranz regarding
17 the question of whether or not Ariel or Gabriel were
18 ever invested with BLMIS?

19 A. No.

20 Q. No. If you had known at any point in
21 time in which you were invested with Ariel and Gabriel
22 that they, themselves, were placing assets with BLMIS,
23 would you have maintained that investment?

24 MR. STEINER: Objection to form.

25 A. Highly hypothetical. I don't know. I

1 don't know about that.

2 Q. Would you have had the same concerns
3 with regard to Ariel and Gabriel investing with BLMIS
4 as you had had concerning Ascot's investment with
5 BLMIS?

6 MR. STEINER: Objection to form.

7 A. Yes.

8 Q. Okay. During the time that you
9 invested with Ariel and Gabriel, we'll say at least
10 from 1996 through 2003, was Mr. Merkin aware of your
11 concerns and desire not to be invested with BLMIS?

12 MR. STEINER: Objection to form.

13 A. Would you state the dates, please.

14 Q. Sure. Between 1996, the time you
15 redeemed from Ascot --

16 A. Yes. Thank you. Yes.

17 Q. -- through 2003, the time you redeemed
18 from Ariel and Gabriel, was Mr. Merkin aware that you
19 did not want to be invested with BLMIS?

20 A. Yes.

21 MR. STEINER: Objection to form.

22 Q. How did he know that? Did you tell
23 him?

24 MR. STEINER: Objection to form.

25 A. Only reason he would know that because

1 A. Of course.

2 Q. What did he say?

3 A. Don't remember what he said, but I
4 believe he acted as a gentleman at all times.

5 Q. Did you continue to have a favorable
6 view of Mr. Merkin from the point in time of that
7 redemption at least through December of 2008?

8 A. Yes.

9 Q. Did you continue to refer potential
10 investors to Ariel and Gabriel during that time
11 period?

12 A. No.

13 Q. Why not?

14 A. For the same reasons that we exited.

15 Q. That reason being performance?

16 A. Performance.

17 Q. Okay. At the time that your funds and
18 those of the joint venture redeemed from Ariel and
19 Gabriel, were you aware that Ariel and Gabriel had
20 investments with BLMIS?

21 A. No.

22 Q. Were you aware that they had been
23 invested with BLMIS since at least August of 2000?

24 A. No.

25 Q. When did you first learn that Ariel and

1 Gabriel had been invested with BLMIS during that time?

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3 it.

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5 learned that Ariel and Gabriel had ever had exposure
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3 A. -- that Mr. Madoff said he wasn't going
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6 with Mr. Madoff then?

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9 do you recall having discussions with anyone at
10 Ehrenkranz regarding your discussions with Madoff?

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23 redeemed from Ascot Partners towards the end of 1995.
24 Is that correct? Why did you redeem then?

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3 possible to achieve, and we just became sufficiently
4 uncomfortable with the whole idea of his ability to do
5 this. And notwithstanding Merkin's feeling that it
6 was okay, we just were sufficiently uncomfortable. We
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8 Q. Okay. Can you explain further what you
9 mean by stability of the return?

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12 positive returns on a monthly basis that Mr. Madoff
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24 very hard to achieve these kinds of returns and just
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3 independent verification. But, nevertheless, was very
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7 the reason for Mr. Madoff's consistency?

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10 how BLMIS could generate positive returns even in a
11 down market?

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14 you maintain your -- the concerns we previously
15 discussed about the clearing firm and the auditor?

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19 Q. Yes.

20 A. No, no. We relied upon Mr. Merkin.

21 Q. Did you continue to discuss those
22 issues with Mr. Merkin at all?

23 A. If I can take your question to be, you
24 used the word "continue," did we ever once again
25 during that period of time discuss that, I don't

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1 Acquisition Fund invested?

2 A. Yes.

3 Q. And, again, you don't disclose the
4 underlying investments made by each of those maybe 8
5 or 10 funds. Right?

6 A. Yes.

7 MR. KITCHEN: Objection to form.

8 A. Correct.

9 MR. STEINER: I have no further
10 questions.

11 MR. SCOTT: No questions here.

12 MR. KLOTZ: I have no questions.

13 MR. KITCHEN: Nothing further from the
14 Trustee.

15 THE VIDEOGRAPHER: Off the record 1:37.

16 (Time noted: 1:37 p.m.)

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